



Office of the Attorney General
Washington, D. C. 20530

October 14, 1983

MEMORANDUM TO THE PRESIDENT
AND THE MEMBERS OF THE CABINET

FROM: Edward C. Schmults
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SUBJECT: Administration Response to
"Drug Tsar" Legislation

I. ISSUE

The Administration must determine its response to continuing efforts by Congress to establish a "drug tsar" to oversee all federal drug enforcement efforts.

II. BACKGROUND

A. Presidential veto of previous "drug tsar" proposal

Over the past eighteen months, there have been repeated efforts in the Congress to create a "drug tsar" to oversee and coordinate all federal drug enforcement efforts, which we have consistently resisted. Despite our opposition and Senator Thurmond's efforts on our behalf, a Biden "drug tsar" amendment to the Violent Crime and Drug Enforcement Improvements Act was accepted by a 2-1 margin last year by the Senate. During the "lame duck" session of the 97th Congress, the "drug tsar" proposal was attached to the so-called "mini-crime bill" (H.R. 3963). As you will recall, the Biden proposal would have created a "super Cabinet-level" drug tsar with vague and sweeping powers to "direct" departments and agencies to carry out the policies he establishes, including the power to reach down into departments and agencies and reassign enforcement personnel.

The President withheld approval of this crime bill primarily because of the "drug tsar" provision. The President stated in his veto message that "[t]he creation of another layer of bureaucracy within the Executive Branch would produce friction, disrupt effective law enforcement, and could threaten the integrity of criminal investigations and prosecutions." He also noted that the coordination of the federal enforcement

efforts against drugs accomplished under the Cabinet Council on Legal Policy has been effective. The President emphasized that our war on drugs does not need more bureaucracy in Washington, but more enforcement action in the field.

B. Continuing Congressional efforts to create a "drug tsar"

Despite our continuing opposition to the "drug tsar" concept, Senator Biden has succeeded in having his new "drug tsar" bill (S. 1787) reported by the Senate Judiciary Committee by a vote of 12 to 5 (3 of the 5 votes against were proxies voted by Chairman Thurmond; in at least one case the proxy was from a Senator who favors the tsar concept). The Biden bill is substantially identical to the "tsar" provision of the mini-crime bill pocket vetoed in January.

On the House side, Congressman Hughes' version of a "drug tsar" proposal (H.R. 3664) has been reported by the House Judiciary Committee. The Hughes' bill builds upon an existing structure (the White House Drug Abuse Policy Office), rather than creating an entirely new structure.

Senator Biden will, as part of his agreement with Chairman Thurmond, be able to bring his bill to the Senate floor as a separate bill upon completion of Senate consideration of the President's crime package, possibly within a few weeks. Congressman Hughes can be expected to try to get his bill approved by the House before the Senate acts on the Biden bill.

C. Legislative Prognosis

House and Senate floor action on "drug tsar" legislation is imminent, and the result will almost certainly be overwhelming approval by both bodies. The simplistic and superficial appeal of the "drug tsar" concept appears irresistible. Even if the President were to veto a "drug tsar" proposal, we must recognize that the vote we anticipate on initial passage would be so strong as to raise concern about a veto override. Moreover, the Administration would suffer from the public's confusion of vetoing a "crime" bill.

It should be noted that the Democratic strategy may be to secure Congressional approval of a bail, sentencing, forfeiture and "drug tsar" package, leaving the balance of the President's anti-crime package to gather dust in the House Judiciary Committee.

III. ADMINISTRATION OPTIONSA. Continued opposition to all "drug tsar" proposals

One Administration alternative is simply to continue to oppose all legislative efforts to impose a "drug tsar" on the Executive Branch with the threat of a second veto. As noted above, however, it is increasingly likely that some kind of "drug tsar" proposal will be passed despite this threat.

B. Possible revision of the Biden bill

A second alternative would be to approach Senators Thurmond and Biden to attempt to revise the Biden bill in a manner which would make it acceptable. Despite the shortcomings of the Biden "drug tsar" bill, there is reason to believe that Biden may be willing to make a number of changes to accommodate our concerns. In this regard, Biden has held out the intelligence community as a model of a successfully coordinated multidepartmental effort. We believe his bill could be modified, therefore, to make it more consistent with the organization of the intelligence community, while at the same time bringing it more into line with our current cabinet council system.

An organization patterned after the intelligence community model can be structured in such a way as to allow a single witness to appear before Congressional committees to testify on anti-drug efforts and accommodate certain other concerns without unnecessarily infringing on the important operational programs of the several departments.

More specifically, the alternative we would suggest would be to establish a Drug Policy and Operations Board chaired by the Attorney General and made up of members of the Cabinet Council on Legal Policy. Such a board would set drug policy and oversee drug enforcement operations through a participatory process that respects the powers of Cabinet officers to supervise the internal affairs of their departments.

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